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No. 89-1817

Supreme Court, U.S.
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In The

# Supreme Court of the United States

October Term, 1990

COUNTY OF RIVERSIDE and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,

*Petitioners,*

v.

DONALD LEE MCLAUGHLIN, ET AL.,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

## BRIEF FOR THE RESPONDENTS IN OPPOSITION

PAUL W. COMISKEY
PRISONERS UNION
1909 Sixth Street
Sacramento, CA 95814
(415) 325-2701

RICHARD HERMAN
229 Marine Avenue
Post Office Box 328
Balboa Island, CA 92662
(714) 673-7670

*DAN STORMER
SILVIA ARGUETA
LITT & STORMER
3550 Wilshire Blvd., #1200
Los Angeles, CA 90010
(213) 386-4303

JAMES GLICK
350 West 5th Street, #208
San Bernardino, CA 92401
(714) 889-1446

*Counsel of Record

*Counsel for Respondents*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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## QUESTIONS PRESENTED

1. WHETHER THE NINTH CIRCUIT COURT OF APPEALS APPROPRIATELY CONCLUDED THAT THE COUNTY OF RIVERSIDE MUST GIVE A WARRANTLESS ARRESTEE A "PROMPT" PROBABLE CAUSE DETERMINATION WITHIN THIRTY-SIX HOURS AFTER ARREST IN ORDER TO BE IN COMPLIANCE WITH THE MANDATES OF *GERSTEIN V. PUGH*, 420 U.S. 103 (1975).

2. WHETHER A PLAINTIFF, WHO IS INCARCERATED AT THE TIME HE FILES HIS ACTION IN A COURT HAVING JURISDICTION TO ENTER INJUNCTIVE RELIEF, AND WHO HAS NOT HAD ANY DETENTION HEARING (PROMPT OR OTHERWISE), HAS STANDING, ON BEHALF OF HIMSELF AND A CLASS OF DETAINEES ARRESTED WITHOUT WARRANT, TO ENJOIN A COUNTY'S POLICY OF REFUSING TO GIVE A PROMPT PROBABLE CAUSE DETENTION HEARING.

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v.

DONALD LEE MCLAUGHLIN, ET AL.,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit**

Respondents Donald Lee McLaughlin, *et al.*, respectfully request that this Court deny the petition for writ of certiorari seeking review of the Ninth Circuit's opinion in this case.

The opinion of the Court of Appeals for the Ninth Circuit is reported at 888 F.2d 1276 and is reprinted in the Petitioner's Appendix at pp. 1-10.

## STATUTES INVOLVED

**Article I, Section 14 of the California Constitution**

**§ 14. Felony prosecutions; indictment or information; proceedings before magistrate; right to counsel; interpreter**

Sec. 14. Felonies shall be prosecuted as provided by law, either by indictment or, after examination and commitment by a magistrate, by information.

A person charged with a felony by complaint subscribed under penalty of perjury and on file in a court in the county where the felony is triable shall be taken without unnecessary delay before a magistrate of that court. The magistrate shall immediately give the defendant a copy of the complaint, inform the defendant of the defendant's right to counsel, allow the defendant a reasonable time to send for counsel, and on the defendant's request read the complaint to the defendant. On the defendant's request the magistrate shall require a peace officer to transmit within the county where the court is located a message to counsel named by defendant.

A person unable to understand English who is charged with a crime has a right to an interpreter throughout the proceedings.

(Added Nov. 5, 1974)

**Article I, Section 15 of the California Constitution**

**§ 15. Criminal cases; speedy public trial; compel attendance of witnesses; appearance and defense; counsel; depositions; double jeopardy; self-incrimination; due process**

Sec. 15. The defendant in a criminal cause has the right to a speedy public trial, to compel attendance of



witnesses in the defendant's behalf, to have the assistance of counsel for the defendant's defense, to be personally present with counsel, and to be confronted with the witnesses against the defendant. The Legislature may provide for the deposition of a witness in the presence of the defendant and the defendant's counsel.

Persons may not twice be put in jeopardy for the same offense, be compelled in a criminal case to be a witness against themselves, or be deprived of life, liberty, or property without due process of law.

(Added Nov. 5, 1974)

## STATEMENT OF THE CASE

### A. The Initial Proceedings

On August 24, 1987, plaintiff Donald Lee McLaughlin filed a complaint for declaratory and injunctive relief on behalf of himself and all others similarly situated in the United States District Court for the Central District of California. Named as defendants were the County of Riverside and Cois Byrd, as Sheriff of the County of Riverside and individually. The complaint stated a claim under 42 U.S.C. § 1983 for violating the civil rights of persons arrested without warrant and detained by the County of Riverside without a "prompt" probable cause determination as required by the parameters of *Gerstein v. Pugh*, 420 U.S. 103 (1975).

On October 13, 1987, plaintiffs moved to certify a class of all present and future Riverside County Jail

pre-trial detainees arrested without warrants and who are denied prompt probable cause hearings.

On November 20, 1987, the County of Riverside and Sheriff Byrd moved to dismiss the First Amended Complaint on the ground that the named plaintiffs lacked standing to prosecute the lawsuit. District Court Judge Gadbois instructed the plaintiffs to add further plaintiffs who were warrantless arrestees incarcerated at the time of filing without having had a prompt probable cause hearing.

On July 25, 1988, the court granted plaintiffs' request to file their Second Amended Complaint, adding as plaintiffs, Johnny E. Jones, Diana Rae Simon, and Michael Scott Hyde. These plaintiffs alleged that they "were arrested without warrants, were taken to the Riverside County Jail, did not receive and have not received prompt probable cause hearings and are still in custody." Defendants' Motion to Dismiss was taken off calendar. On August 23, 1988, defendants filed an answer to the Second Amended Complaint.

On November 14, 1988 the court granted plaintiffs' motion to certify a class consisting of all pre-trial detainees arrested without warrants and held in the Riverside County Jail from August 1, 1987 to the present, and all such future detainees who may be denied prompt probable cause, bail or arraignment hearings.

There is no legally proper probable cause hearing for continued detention held in Riverside County under the present procedure. The entire procedure focuses on the arraignment process, and, in fact, defendants stipulated that "ordinarily the first appearance before a judge or



commissioner of a person arrested without a warrant and still in custody with warrants or holds in Riverside County *is at the arraignment.*" [Emphasis added.] The defendants further stipulated that "if criminal charges have not been filed, the in-custody arrestee, without warrants or holds, is released at about 5:00 p.m. *on the last day for arraignment*. If criminal charges have been filed *the arraignment takes place on the last day for arraignment.*" [Emphasis added.]

In Riverside County, a probable cause detention hearing will not be held for a felony arrest except at the preliminary hearing. The preliminary hearing will not take place until ten days after arraignment. The arraignment can be as many as five days or six days after the actual arrest. A warrantless arrestee is not even told of his right to have a probable cause hearing until the time of arraignment.

Under the Riverside procedure, a person will be arraigned forty-eight hours from the time of his or her arrest, *excluding Saturday, Sunday and Holidays*. Thus, if a person is arrested on Wednesday evening, he will not be *arraigned* until the following Monday, a period of over 100 hours. If the arrest should fall on a holiday weekend, the detention period, *even prior to arraignment*, would be somewhere over 124 hours.

All of this only applies to arraignments. There exists *no set procedure* for either probable cause determinations or detention hearings, which are not routinely provided at arraignment. A close examination of the defendants' advisement to prisoners of their rights indicates that, at the arraignment hearing, prisoners are told through a

remote video hook-up that a person has a right to a hearing to determine whether there is a probable cause for arrest. However, the prisoners must request the probable cause or bail hearing at the time of arraignment, and it is provided at a later date. Often, the first probable cause hearing is at the preliminary hearing, held at least ten days after arraignment. The evidence before the trial court as to this procedure was substantial.

### B. The Motion for Preliminary Injunction.

On March 3, 1989, plaintiffs filed a motion for preliminary injunction. Plaintiffs asserted that persons arrested without warrants in the Riverside County Main Jail were not receiving a prompt probable cause determination upon completion of the administrative steps necessary to complete an arrest as required by *Gerstein v. Pugh*, 420 U.S. 103 (1975). Plaintiffs requested the court to issue a preliminary injunction requiring inmates in the Riverside County Main Jail to receive a probable cause determination within thirty-six hours of arrest, to be conducted by an appropriate judicial officer.

Defendants filed their opposition on April 7, 1989. Plaintiffs filed their reply to the opposition to the motion for preliminary injunction on April 13, 1989.

On April 19, 1989, the Honorable Richard Gadbois issued a preliminary injunction merely requiring that the County of Riverside, by and through Cois Byrd, its sheriff, shall initiate and implement a policy that, "All persons arrested without a warrant and detained in custody *in the Riverside County Main Jail*, located in the City of Riverside, County of Riverside, California, shall within



thirty-six hours of the time of the arrest, be taken before a Judge, Magistrate, Court Commissioner, or other authorized judicial officer, for a hearing on determination of probable cause for detention."[1] The preliminary injunction also stated that, if attendance of the arrestee at the probable cause hearing was impracticable, the hearing could proceed without the arrestee.

The district court retained jurisdiction to review the procedures adopted and to monitor implementation of the procedures "as soon as practicable."

### C. The Appeal

Notice of appeal of the preliminary injunction was filed May 11, 1989 by the defendants. Defendants also moved for a stay pending appeal in the district court, which was denied. Defendants requested the Ninth Circuit to grant a stay pending appeal, and on June 20, 1989, the Ninth Circuit granted the request for stay and expedited the appeal (Pet. App., p. 14).

The Ninth Circuit consolidated the instant case with a similar action, *McGregor, et al. v. County of San Bernardino*, Ninth Circuit Case No. 89-55542, arising from a district court's order granting a preliminary injunction requiring the County of San Bernardino to provide warrantless arrestees with probable cause determinations

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[1] Judge Gadbois's awareness of the *Gerstein* requirements is evidenced by his forbearance in not making a determination as to rural jails in the County of Riverside. His immediate decision focused on the Riverside County Main Jail and not on the outlying jurisdictions (Pet. App., pp. 8-9, 12.).

within thirty-six hours of arrest. In *McGregor*, the County of San Bernardino challenged the need for the arrestees to appear personally before a magistrate in order to receive a probable cause determination.

On November 8, 1989, the Ninth Circuit issued its opinion affirming the district court's order granting a preliminary injunction with respect to the County of Riverside in the case. The Court found that the named class representatives had standing under *City of Los Angeles v. Lyons*, 461 U.S. 95 (1985) and further found that providing an arraignment time frame as provided for in California Penal Code §§ 825 and 991 (Pet., pp. 3-5) without providing probable cause hearings within thirty-six hours was not in accord with *Gerstein*'s requirement of a determination "promptly after arrest."

### D. The Petition for Writ of Certiorari

This petition for Writ of Certiorari seeks to overturn *Gerstein v. Pugh* and *City of Los Angeles v. Lyons*, two of this Court's well established decisions.

In arguing that standards for pre-trial probable cause hearings should be set on a state-wide basis, the petition seeks a reversal of *Gerstein*'s well considered principle of tailoring the time period allowed for a probable cause detention hearing to the *needs* of the local entity. The petitioners also seek a reversal of *Gerstein* because that opinion quite clearly holds that a plaintiff need only demonstrate that he was suffering the harm complained of at the time of filing. In fact, the decision in *Gerstein* is on all fours, factually and legally, with this action. Only



through a reversal of *Gerstein* on both the underlying and the class issues can petitioners succeed.

Further, the petition seeks a reversal of *Lyons* by claiming that plaintiffs lack standing to obtain injunctive relief although they were suffering injury-in-fact when they first filed their claims. *Lyons* makes it quite clear that a plaintiff's standing to obtain injunctive relief arises if the plaintiff is suffering injury from the alleged wrongful actions at the *time the plaintiff files his complaint*. It is only when that is not the case that a plaintiff must demonstrate that "he will again be subjected to the alleged illegality." *City of Los Angeles v. Lyons*, 461 U.S. at 109.

Essentially, the petition seeks a reversal of these two well established opinions and a retrial of the factual issues in the instant case. This court should reject petitioners' invitation to reverse two well reasoned decisions.

## REASONS WHY THE PETITION SHOULD BE DENIED

### I. NEITHER THE NINTH CIRCUIT'S OPINION OF NOVEMBER 8, 1989 NOR THE RECORD RAISES THE QUESTIONS PRESENTED IN THE PETITION.

This Court in *Gerstein* held that "the Fourth Amendment requires a judicial determination of probable cause as a prerequisite to extended restraint of liberty following arrest." *Gerstein v. Pugh*, 420 U.S. at 114. This Court stated that the probable cause determination must "be made by a judicial officer either before or *promptly* after arrest." *Id.* at 869, (emphasis added). As stated so aptly in *Schall v.*

*Martin*, 467 U.S. 253, 275 (1984), the Court in *Gerstein* "did not mandate a specific timetable" for a probable cause determination, but it did explain that a brief period of detention was justified in order to take the administrative steps incident to arrest. *Id.* at 863.

In affirming the trial court, the Ninth Circuit noted that, "the judge in issuing this injunction considered the size of the county and the location of the detainees. He concluded that thirty-six hours provided the County with ample time to complete its administrative procedures *and the County has not presented any facts to the contrary.*"[2] (Pet. App., p. 8) (emphasis added).

The trial judge specifically limited the scope of the preliminary injunction to inmates at the Riverside County Main Jail. There was no determination by the Ninth Circuit that its decision affirming the preliminary injunction would now be the vehicle for establishing new law in the State of California, nor that it would render unconstitutional certain provisions of the California Penal Code. Defendants mischaracterize the holding of the Ninth Circuit and the preliminary injunction issued by the district court. Nowhere in the opinion issued by the Ninth Circuit is it stated, implied or inferable that the preliminary injunction is to have such a broad scope as to change the

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[2] The trial judge specifically determined it was unnecessary to make any ruling on the constitutionality of state law, stating: "[T]here is a clear difference between the concept of an arraignment and the *Gerstein* process. . . . [T]here's just no reason for me to declare any section of the Penal Code unconstitutional."



procedures in every jurisdiction outside of the County of Riverside.

This Court has recognized the desirability of flexibility and experimentation by the States and stated, "[I]n some States, existing procedures may satisfy the requirement of the Fourth Amendment. *Others may require only minor adjustment, such as acceleration of existing preliminary hearings.*" *Gerstein* v. *Pugh*, 420 U.S. at 124 (emphasis added). The trial judge took great pains not to engage in any judicial overreaching. Rather than make any adjustments to the state statutory scheme, he merely set applicable time tables for the probable cause hearing, and did nothing to affect either the state statute or the County's arraignment procedures. The state arraignment procedures were never at issue.

The preliminary injunction issued by the district court merely follows *Gerstein* by modifying the existing policy for probable cause determinations by the County of Riverside based upon the evidence presented. Defendants' argument that Riverside's policy complies with *Gerstein* v. *Pugh* because they claim it follows the California Penal Code is clearly erroneous and misleading. While the California Constitution and Penal Code do provide for a probable cause hearing to occur within the misdemeanor arraignment process, there is no requirement under California law that the probable cause hearing must await the arraignment.

The flaws in defendants' argument are highlighted by even a cursory reading of the applicable California law. Article I, Section 15 requires that a person in police custody be promptly brought before a magistrate and

formally charged. Article I, Section 14 requires that "[a] person charged with a felony by complaint . . . be taken without unnecessary delay before a magistrate." The above sections are implemented in Penal Code Sections 825 and 991. Section 825 establishes that an *arraignment* must occur within two days of the arrest, excluding Sundays and holidays. (Pet., p. 3). Section 991 applies only to misdemeanors and requires that the probable cause hearing occur at the arraignment only "if the defendant is in custody," and if requested by counsel for the defendant or the defendant. The California procedures outlined by the California Constitution and the Penal Code do not specifically provide for a prompt probable cause hearing for warrantless arrestees. Whether Riverside County complies with state law concerning arraignments is irrelevant to a determination of promptness under *Gerstein v. Pugh*.

Petitioners cite to *Williams v. Ward*, 845 F.2d 374 (2nd Cir. 1988), claiming it provides support for their argument that the Ninth Circuit has misapplied the law as stated by this Court and created a conflict between the Ninth Circuit and the Second Circuit. In fact, *Williams* provides yet another basis for the preliminary injunction issued by the court below. *Williams* provided that a probable cause determination at arraignment within 72 hours of arrest was constitutionally permissible under *Gerstein*. The court in *Williams* found such a length of time permissible due to the vast array of procedural hurdles required by the City of New York's criminal courts system. The Court in *Williams* noted that "the constitutional 'promptness' of a probable cause hearing must be determined in



light of the totality of the processes afforded the defendant." The Ninth Circuit was well aware that it must consider the needs of a particular criminal justice system in determining the length of time permissible for delay between time of arrest and a probable cause determination. In its opinion of November 8, 1989, the Ninth Circuit noted, "Riverside County does not claim that it needs more than thirty-six hours to complete the administrative steps incident to arrest. The judge in issuing this injunction considered the size of the county and the location of the detainees . . . and the County has not presented any facts to the contrary." (Pet. App., p. 8).

The Ninth Circuit opinion also recognized the determination in *Fisher v. Washington Metro, Area Transit Authority*, 690 F.2d 1133, 1139-41 (4th Cir. 1982) that "[b]ecause the administrative steps incident to a particular arrest will necessarily vary with geographical factors and with local police and court system practices as well as with innumerable factual exigencies (including, of course, obstruction) this principle can only be applied on a case-by-case basis." (Citations omitted.)[3]

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[3] The Ninth Circuit also looked at the requirements for probable cause determinations in its other decisions. *Bernard v. City of Palo Alto*, 699 F.2d 1023, 1025 (9th Cir. 1983) held *Gerstein* required a probable cause determination to be made as soon as the administrative steps incident to arrest were completed and that those steps should require only a "brief period," emphasizing that under the circumstances of that case, more time was not required to complete the administrative procedures incident to arrest. *See Kanekoa v. City and County of Honolulu*, 879 F.2d 607, 611 n.1 (9th Cir. 1989), clarifying *Bernard*'s discussion of time limits required under *Gerstein*.

Petitioners' contention that the Ninth Circuit's decision of November 8, 1989 has created a conflict with other circuits (Pet., pp. 17-18) is simply erroneous and without merit. Petitioners misapprehend the law. On the one hand, petitioners state *Gerstein* did not "mandate a specific timetable" and that flexibility and experimentation are desirable (Pet., p. 13). On the other hand, they ask this Court to grant review because the Ninth Circuit's established policy of reviewing "such time periods on a case-by-case basis, without regard to uniform procedures," creates a conflict within the circuits (Pet., p. 19).

Other circuit decisions have applied *Gerstein* in a similar manner to that which the Ninth Circuit did here, by taking into account the law of the jurisdiction and facts relating to a particular process. *See, e.g., Gramameno v. Jewel Co., Inc.*, 797 F.2d 432 (7th Cir. 1986) (thirty-six hours appropriate time for probable cause determination given the necessary "administrative steps"); *Moore v. Marketplace Restaurant Inc.*, 754 F.2d 1336 (7th Cir. 1985) (court remanded determination concerning four hour detention for further determination in light of "necessary administrative steps").[4]

Based on the record before it, the trial court determined that thirty-six hours is an appropriate time frame

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[4] Several district courts have determined a brief delay of twenty-four hours to complete the "administrative" process is sufficient. *See Dommer v. Hatcher*, 427 F. Supp. 1040 (N.D.Ind. 1977); *Sanders v. City of Houston*, 543 F. Supp. 694 (S.D.Tx. 1982) (twenty-four hours sufficient, rejecting one and one-half hour standard of *Lively v. Cullinane*, 451 F. Supp. 999 (D.D.C. 1976); *Mabry v. County of Kalamazoo*, 626 F. Supp. 912 (W.D.Mich. 1986) (ordering that *Gerstein* standards be upheld during a holiday weekend).



for providing the required hearings. Petitioners presented no evidence to the contrary. Defendants have repeatedly stated that their arraignment procedures comply with the requirements of *Gerstein* in that the procedures under California Penal Code §§ 825 and 991 (Pet., pp. 3-5) provide a warrantless arrestee with a probable cause determination hearing at the time of arraignment. This does not address the issue at hand, since there is no showing that defendants' arraignment process satisfies the promptness standards of *Gerstein*.

As support for their argument, petitioners cite to *In Re Walters*, 15 Cal. 3d 738 (1975). While the court in *In Re Walters*, 15 Cal. 3d at 750, stated that "arraignment was the most appropriate stage of the proceedings in which to make a judicial determination of probable cause that defendant is being properly detained," the case does not aid in interpreting *Gerstein*'s "promptness" requirement because, *inter alia*, *Walters* dealt only with a probable cause determination of warrantless misdemeanor arrestees.

Petitioners' reliance on *In Re Walters* is flawed for three reasons. First, the case does not address the issue of "promptness." Second, it applies only to misdemeanors, did not address warrantless felony arrestees, and focused only on whether a probable cause hearing was ever granted. Lastly, the case merely set outside limits for the arraignment and did not limit or define in any form the right to a probable cause hearing.[5] Thus, there is no

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[5] Additionally, *In Re Walters* did not address the issue of whether or not the probable cause determination may be made

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support for petitioners' argument that their compliance with state standards passes constitutional muster.

## II. THE NINTH CIRCUIT'S OPINION MERELY STATES THAT PLAINTIFFS HAVE STANDING TO SEEK INJUNCTIVE AND DECLARATORY RELIEF ON BEHALF OF THE CLASS AND DOES NOT CREATE ANY CONFLICT WITH THE OPINIONS OF THIS COURT OR THOSE OF THE SEVENTH CIRCUIT COURT OF APPEALS.

The argument advanced by petitioners in their brief that there is a conflict between the opinions of this Court and the circuit courts masks their real hope to have this Court overturn two well established decisions, *Gerstein v. Pugh* and *City of Los Angeles v. Lyons*.

There is no dispute that a plaintiff seeking injunctive relief must demonstrate standing under Article III in

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prior to the two days required by Penal Code § 825. *Youngblood v. Gates*, 100 Cal. App. 3d 1302 (1988) has interpreted Penal Code § 825 to mean that the "two-day" arraignment requirement refers to "days" not "hours." *Id.* at 1313. Thus, the Riverside policy of a "48-hour" detention prior to the probable cause hearing is in direct conflict with the legislative intent of Penal Code § 825. In determining whether follow-up investigations and transportation are unnecessary delay, the *Youngblood* court held that an unnecessary delay can occur prior to the two-day arraignment delay specified by Penal Code § 825, "[These] provisions make clear that the two-day period set forth in Penal Code § 825 is not a limitation on 'necessary' delay. Thus, no unnecessary delay is permissible between the time of arrest and presentation of a magistrate, *even if that presentation takes place within two days*." *Id.* at 1319 (emphasis added).



order to obtain relief. The Ninth Circuit correctly decided that plaintiffs in *McLaughlin* were actually suffering from the harm for which they sought injunctive relief and therefore had standing (Pet. App., p. 6).

At the time of the filing of the Second Amended Complaint, plaintiffs Jones, Simon and Hyde were jail inmates arrested without warrants who did not receive within thirty-six hours, and had not yet received, probable cause determinations. Petitioners attempt to cloud the issues by arguing that plaintiffs must demonstrate that they might again be subjected to the illegality of incarceration without a prompt probable cause hearing.

In *Gerstein v. Pugh*, two individuals who had been subjected to temporary detention without a probable cause hearing filed a class action lawsuit seeking declaratory and injunctive relief requiring the state to provide them and other similarly situated persons with judicial hearings on the issue of probable cause. The trial court certified the class and granted the requested relief.

This Court affirmed the trial court's ruling on the class certification issue although the plaintiffs' pre-trial detention had ended at the time of oral argument and despite the absence in the record of any evidence that they had been incarcerated at the time of class certification. *Id.* at 110 n. 11.

The Court explained that the case "belongs . . . to that narrow class of cases in which the termination of a class representative's claim does not moot the claims of the unnamed members of the class." *Id.* The opinion proceeded to explain that pre-trial detention is by nature temporary. Since it would be unlikely that any given

individual could have constitutional claims decided on appeal before he is arrested or convicted, that individual could suffer repeated deprivations. It was very likely that other persons similarly situated would also be detained under the same allegedly unconstitutional procedures. The Court concluded that the claim was one that was "capable of repetition, yet evading review." *Id.*

Thus, the Court made clear that a class representative whose standing to seek injunctive relief arises from his pre-trial custody may seek injunctive relief on behalf of a class of similarly situated individuals so long as he had standing at the time he first asserted his claim.

Petitioners make the disingenuous argument that the Ninth Circuit's decision is in direct conflict with the Seventh Circuit's decision in *Robinson v. City of Chicago*, 868 F.2d 959 (7th Cir. 1989). Petitioners contend that the facts in *Robinson* were virtually identical to those in this case (Pet., p. 23), but even a cursory look at *Robinson* illustrates the fallacy in that statement. In *Robinson*, plaintiffs sought to challenge the constitutionality of a policy of detaining persons without probable cause in order to allow further police investigation. *The complaint was filed more than one month after the temporary detention had ended.*

Applying *Gerstein*, *Robinson* ruled that while it is not necessary for a class representative in such a case to be incarcerated at the time of class certification or thereafter in order to obtain injunctive relief, there must be a showing that standing existed at the time the plaintiff commenced his action. *Robinson v. City of Chicago*, 868 F.2d at



968. To determine whether the plaintiffs in *Robinson* had standing at the time they filed their complaint, the court looked to the controlling standards of *City of Los Angeles v. Lyons*. *Robinson v. City of Chicago*, 868 F.2d at 966. Since the plaintiffs in *Robinson* were no longer subject to the temporary detention at the time they filed their complaint, the Court ruled they never had standing to seek injunctive relief on behalf of themselves or the class. *Id.* at 968.

Petitioners mislead this Court by presenting an argument premised on the fact that, since plaintiffs did not receive a probable cause determination and such time has now passed, they necessarily lack a direct personal interest in any claim for injunctive relief attempting to obtain a "prompt" probable cause determination. (Pet., p. 24). Such a statement ignores the relevant law in this area. In *Robinson*, the Seventh Circuit interpreted *Gerstein* as creating an "exception" to mootness. *Robinson v. City of Chicago*, 868 F.2d at 968. "[A] class representative's claim must be live when he files the case, even if the representative's case becomes moot before the class is certified." *Id.*

Similarly, in *Williams v. Ward*, 845 F.2d at 380, the court also applied *Gerstein* in ruling that the case was not moot even though the named plaintiffs there no longer had a personal stake in the outcome of the litigation. "Although the named plaintiffs have thus long ago obtained probable-cause reviews of their arrests, this case is of course not moot for the same reason that the class actions in *Schall v. Martin*, 467 U.S. 253 (1984), and *Gerstein v. Pugh* were not mooted by the termination of the claims of the class representatives in those cases." *Id.* at

380 n. 6. As in *Gerstein*, the focus was on whether the plaintiffs had standing when they commenced their action.

These decisions reflect the uniform view of the circuit courts that *Lyons* in no way disturbed the standing holding in *Gerstein*, and that pre-trial detainees arrested without warrants have standing to bring *Gerstein* challenges so long as they file suit while they are so detained and have received no hearing. Nothing in the opinion of this Court suggests a contrary view.

Respondents have demonstrated that they had standing under *Lyons* precisely because *they were incarcerated* without having had a prompt probable cause hearing *at the time of the filing of the Second Amended Complaint*, through which these plaintiffs first asserted their claims in court. Thus, they have standing to challenge the unconstitutional practices and policies of Riverside County, not only on their own behalf, but also on behalf of the other class members.

## CONCLUSION

The petition is a request to overturn two established decisions of this Court. Granting review will throw well established law into disarray. The petition's arguments distort the Ninth Circuit's decision. Plenary review by this Court is unwarranted.

For the foregoing reasons, petitioners respectfully submit that the petition for writ of certiorari should be denied.



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Respectfully Submitted,

PAUL W. COMISKEY
PRISONERS UNION

RICHARD HERMAN

JAMES GLICK
*DAN STORMER
SILVIA ARGUETA
LITT & STORMER

*Counsel for Respondents*
*Donald Lee McLaughlin, et al.*

*Counsel of Record